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LOCAL SERVICE NATIONAL VOICE

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FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF THE SECRETARY

December 20, 2002

Marlene H. Dortch, Secretary  
Federal Communications Commission  
Office of the Secretary  
445 12th Street, SW  
Washington, DC 20554

EX PARTE OR LATE FILED

Re: Ex Parte Notice:

Reexamination of the Comparative Standards for  
Noncommercial Educational Applicants: MM Docket No. 95-31

Dear Ms. Dortch:

Following is a letter and supplemental memorandum that APTS filed with the office of Chairman Powell in the above captioned proceeding. Copies were provided to Commissioners Abemathy, Adelstein, Copps and Martin, as well as the Commission staff noted in the letter.

✓ onna Thompson  
Associate Vice President  
Strategic Initiatives & Corporate Counsel

No. of Copies rec'd 075  
List ABCDE

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ORIGINAL



December 20, 2002

DEC 20 2002

Chairman Michael K. Powell  
Federal Communications Commission  
445 12th Street, SW  
Washington, DC 20554

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Re: Ex Parte Notice:

Reexamination of the Comparative Standards for  
Noncommercial Educational Applicants: MM Docket No. 95-31

Dear Chairman Powell:

The Association of Public Television Stations (APTS) files the attached ex parte filing in the above captioned proceeding. Consistent with its mission to deliver noncommercial educational telecommunications services to all Americans, APTS writes to draw your attention to a critical issue that may substantially affect the ability of rural Americans to receive noncommercial educational (NCE) television services.

Because millions of rural Americans rely on NCE TV translators for their only public television service, it is crucial that this technology be protected. However, in the above captioned proceeding, the Media Bureau has been considering subjecting NCE TV translators to auction where applicants are competing with commercial entities for the mutually exclusive spectrum. This policy is not only contrary to federal statute but will also have the deleterious effect of hindering the survival and development of this valuable rural service. We urge you to oppose this policy and to support the exemption from auctions for NCE TV translators.

Sincerely,

Marilyn Mohrman-Gillis  
Vice President, Policy and Legal Affairs  
Lonna Thompson  
Associate Vice President, Strategic Initiatives & Corporate Counsel  
Andrew D. Cotlar  
Senior Staff Attorney

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cc: Commissioner Kathleen Q. Abernathy  
Commissioner Jonathan S. Adelstein  
Commissioner Michael J. Copps  
Commissioner Kevin J. Martin  
Eric J. Bash  
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Mary Beth Murphy  
Robert Ratcliffe  
Stacy Robinson  
Lisa Scanlon  
Sarah Whitesell

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Before the  
Federal Communications Commission  
Washington, D.C. 20554

DEC 24 2002

RECEIVED  
FEDERAL COMMUNICATIONS COMMISSION  
WASHINGTON, D.C. 20554

In the Matter of )  
 )  
Reexamination of the Comparative Standards ) MM Docket No. 95-31  
for )  
Noncommercial Educational Applicants )  
 )  
Association of America's Public Television  
Stations' Motion for Stay of Low Power )  
Television Auction (No. 81)

**Supplemental Memorandum**

**1. To Secure Universal Service to All Americans, the Commission Must Protect Noncommercial Educational Translators from Auction Procedures**

**A. Background**

Public television has been remarkably successful in using noncommercial educational (NCE) TV translators to extend public television service to rural or remote areas in a cost-effective manner consistent with the realities of public television funding. Consistent with its mission to deliver public telecommunications services to all Americans,<sup>1</sup> public television has used full-power TV stations and approximately 700 NCE TV translators, to provide services to over 99 percent of the American public.<sup>2</sup>

<sup>1</sup> Congress has determined that "[I]t is necessary and appropriate for the Federal Government to complement, assist, and support a national policy that will most effectively make public telecommunications service available to all citizens of the United States." 47 U.S.C. § 396(a)(7). Congress has further concluded that "[I]t is in the public interest for the Federal Government to ensure that all citizens of the United States have access to public telecommunications service through all appropriate available telecommunications distributions technologies." 47 U.S.C. § 396(a)(9).

<sup>2</sup> By way of comparison, the FCC has licensed a total of 377 noncommercial educational TV stations as compared with 4,762 TV translators (UHF & VHF) and 2,212 UHF/VHF LPTV stations. See Broadcast Totals as of September 30, 2001 on FCC website at [www.fcc.gov](http://www.fcc.gov). Thus, the approximately 700 NCE TV translator licenses licensed to APTS members comprise about 10 percent of all TV translator/LPTV licenses.

Over the years, many of the NCE TV translators rebroadcasting public television stations were encouraged, and funded, in part, by the Corporation for Public Broadcasting, by the Department of Commerce's Public Telecommunications Facilities Program ("PTFP"), and by state, local, or charitable funds, reflecting an important federal, state and local investment in universal access to public television.

A study conducted by the Corporation for Public Broadcasting in 1998 concluded that over 12 million Americans are served by NCE TV translators.<sup>3</sup> Of these, over two million Americans receive no other public television service. This study establishes that the preservation and expansion of noncommercial TV translator service affects not just a few scattered individuals, but entire communities, with smaller, more rural communities being most affected. Moreover, noncommercial educational access to translators affects not only those viewers who access television signals over the air but numerous subscribers to rural cable systems nationwide that rely on the reception of television translator signals at cable headends to provide service to areas unserved by off-air signals. Public Television believes that translators are a critical component in the delivery of noncommercial educational services to all Americans.<sup>4</sup>

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<sup>3</sup> See Reply Comments of the Association of America's Public Television Stations, and the Public Broadcasting Service, Rural and Small Market Access to Local Television Broadcast Signals, Department of Commerce, National Telecommunications and Information Administration, Docket No. 000208032-0031-01 (May 15, 2000), citing Jerry Ostertag, Analysis of Impact of Elimination of Translators, Corporation for Public Broadcasting, September 18, 1998.

<sup>4</sup> APTS, PBS and CPB have jointly petitioned this Commission to initiate a rulemaking to protect NCE TV translators and to ensure their continued operation as we progress through the digital era. Association of Public Television Stations, Public Broadcasting Service and Corporation for Public Broadcasting, Petition for Rulemaking, "Enhancement of Broadband Access Through the Preservation of Public Television Translator Service and the Development of Digital Translators and Digital On-Channel Repeaters," (May 29, 2002).

## **B. NCE TV Translators are Exempt from Competitive Bidding**

The Communications Act of 1934, as amended, provides that the competitive bidding authority does not apply to "licenses or construction permits issued by the Commission ... for stations described in section 397(6) of this Act," *i.e.*, NCE stations.<sup>5</sup> When implementing the competitive bidding mandated by Congress, the Commission chose to award licenses for reserved spectrum among competing NCE applicants according to a point system designed to select the most preferred applicant,' but required applicants proposing to **use** unreserved spectrum to compete at auction with their commercial counterparts.' This latter category of stations included NCE TV translators, which all operate on non-reserved channels.' In NPR v. FCC, the U.S. Court of Appeals for the D.C. Circuit rejected the Commission's construction of Section 309,<sup>9</sup> holding that "nothing in the [Communications] Act authorizes the Commission to hold auctions for licenses issued to NCEs to operate in the unreserved spectrum," because Section 309(j)(2)(C) denies the Commission the authority to use competitive bidding "based on

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<sup>5</sup> 47 U.S.C. § 309(j)(2)(C). Section 397(6) states that "The terms "noncommercial educational broadcast station" and "public broadcast station" mean a television or radio broadcast station which- (A) under the rules and regulations of the Commission in effect on the effective date of this paragraph [Nov. 2, 1978], is eligible to be licensed by the Commission as a noncommercial educational radio or television broadcast station and which is owned and operated by a public agency or nonprofit private foundation, corporation, or association; or (B) is owned and operated by a municipality and which transmits only noncommercial programs for education purposes." 47 U.S.C. § 397(6).

<sup>6</sup> See 47 C.F.R. §§ 73.7000 et. seq., Reexamination of the Comparative Standards for Noncommercial Educational Applicants, Report & Order, FCC 00-120, 15 FCC Rcd 7386 (rel. April 21, 2000), and Reexamination of the Comparative Standards for Noncommercial Educational Applicants, Memorandum Opinion and Order, FCC 01-64, 2001 FCC LEXIS 1191, MM Docket No. 95-31 (rel. Feb. 28, 2001).

<sup>7</sup> Reexamination of the Comparative Standards for Noncommercial Educational Applicants, Report & Order, FCC 00-120, 15 FCC Rcd 7386, ¶ 106 et. seq. (rel. April 21, 2000).

<sup>8</sup> There is no "reserved" spectrum for TV translator stations because translators are licensed on a "drop in" basis, instead of based on a Table of Allocations.

"254 F.3d 226 (D.C. Cir. 2001)

the nature of the station that ultimately receives the license, and not on the part of the spectrum in which the station operates.””

On remand, the Media Bureau, however, has suggested that under Section 309(j)(2)(C) of the Communications Act (47 U.S.C. § 309(j)(2)(C)), NCE TV translators that propose to rebroadcast the signal of a main NCE station are not exempt from auctions if the spectrum for which the translator applies is mutually exclusive with a commercial applicant.” On May 15, 2002 and June 17, 2002, the Association of Public Television Stations (APTS) submitted comments and reply comments, arguing that this interpretation is untenable both as a matter of statutory interpretation and as a matter of good policy.

In its Notice of Proposed Rulemaking, and in subsequent meetings with Commission staff, it has been suggested that because the Commission does not license NCE entities “as such” for TV translator channels, the exemption from auction at Section 309(j)(2)(C) might not apply in this context.” The implication is that NCE TV translators are really not NCE stations after all. This interpretation flies in the face of Commission practice and basic principles of statutory interpretation and should be rejected.

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<sup>10</sup> *Id.* at 229.

<sup>11</sup> Reexamination of the Comparative Standards for Noncommercial Educational Applicants; Association of America’s Public Television Stations’ Motion for Stay of Low Power Television Auction (No. 81), Second Further Notice of Proposed Rulemaking, FCC **02-44**, MM Docket No. **95-31** (rel. February 25, 2002) (NPRM), ¶ 21

<sup>12</sup> NPRM, ¶ 21

First, the sole purpose of NCE TV translators is to retransmit the programming of their primary NCE stations.” Unlike low power television licensees, NCE TV translators cannot originate programming.<sup>14</sup> NCE TV translators were created and are operated solely to extend the service of main NCE stations to hard-to-reach areas of this Nation. There is therefore no practical means—and more importantly, no incentive—for public television station to operate NCE TV translators on a commercial basis. Indeed, the Commission’s own processing policies require NCE TV translators to certify that they will be operated solely as a NCE service in order to obtain a waiver from the application fee. (See FCC Form 347, “Application for Low Power TV, TV Translator, or TV Booster License,” Instructions, p. 2 (April 2000), attached as Appendix A.) As a matter of Commission policy and procedure, therefore, NCE TV translators are clearly identifiable and distinct from commercial translator services and will continue to be so

Secondly, as a matter of statutory interpretation, federal law clearly categorizes NCE TV translators as noncommercial educational broadcast stations and therefore exempt from auctions. Section 309(j)(2)(C) exempts all “stations described in section 397(6) of this Act” from the Commission’s competitive bidding procedures, i.e.

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<sup>13</sup> 47 C.F.R. § 74.731(a) (“Television broadcast translator stations and television broadcast booster stations provide a means whereby the signals of television broadcast stations may be retransmitted to areas in which direct reception of such television broadcast stations is unsatisfactory due to distance or intervening terrain barriers”). See also 47 C.F.R. § 74.701(a) (defining a “television broadcast translator station” as “a station in the broadcast service operated for the purpose of retransmitting the programs and signals of a television broadcast station, without significantly altering any characteristic of the original signal other than its frequency and amplitude, for the purpose of providing television reception to the general public.”)

<sup>14</sup> “The legal status of a translator station is defined by the nature of its programming, following an appropriate declaration by the licensee, as either rebroadcast or origination, not by the station’s original application or authorization. An LPTV operating under a TV translator mode of service is one that retransmits a television broadcast station and originates programming in any amount greater than 30 seconds per hour and/or operates a subscription service. A translator only retransmits the programming of its primary station and does not originate programming.” Complaints of Maine Public Broadcasting Corporation against A-R Cable Services d/b/a Cablevision Petitions for Declaratory Ruling and Requests for Carriage, 1 CR 741, 10 FCC Rcd 1893 (1995).



“noncommercial educational broadcast stations,”” which for the reasons discussed below includes NCE TV translators. While the Media Bureau apparently considers it significant that the definition does not explicitly include NCE TV translators, this is not surprising: at the time Section 397(6) was enacted (1978), the Commission was in the midst of a broad-based inquiry into the role of TV translators in the national telecommunications system.” Nevertheless, Congress subsequently made it clear that TV translators that repeat the signal of a main NCE station are to be considered NCE stations themselves, regardless of the spectrum in which they operate. In 1992, Congress enacted Section 615(l)(1) of the Communications Act, which defined the term “qualified noncommercial educational television station” for purposes of cable carriage to include NCE TV translators.<sup>17</sup>

It is surely a reasonable inference, therefore, that five years later in 1997 when Congress enacted the Commission’s auction authority and exemptions at Section 309(j)(2)(C), it was fully cognizant that it had earlier categorized NCE TV translators as

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<sup>15</sup> Section 397(6) of the Communications Act defines two terms – “noncommercial educational broadcast station” and “public broadcast station” — to mean a television or radio broadcast station which: “(A) under the rules and regulations of the Commission in effect on the effective date of this paragraph [effective Nov. 2, 1978], is eligible to be licensed by the Commission as a noncommercial educational radio or television broadcast station and which is owned and operated by a public agency or nonprofit private foundation, corporation, or association; or (B) is owned and operated by a municipality and which transmits only noncommercial programs for education purposes.” 47 U.S.C. § 397(6).

<sup>16</sup> An Inquiry into the Future Role of Low-Power Television Broadcasting and Television Translators in the National Telecommunications System, 68 FCC 2d 1525 (1978).

<sup>17</sup> 47 U.S.C. § 535(l)(1). Section 615(l)(1) states that *the term* “qualified noncommercial educational television station” includes: “(I) the translator of any noncommercial educational television station with five watts or higher power serving the franchise area, (II) a full-service station or translator if such station or translator is licensed to a channel reserved for noncommercial educational use pursuant to section 73.606 of title 47, Code of Federal Regulations, or any successor regulations thereto, and (III) such stations and translators operating on channels not so reserved as the Commission determines are qualified as noncommercial educational stations.” 47 U.S.C. 535(l)(1). See also S. Report No. 92, 102d Cong., 1st Sess. (June 28, 1992) (“Translators are particularly important to rural areas that are located far from the principal communities of the main station. Including translators in this definition ensures carriage by cable systems in remote areas not served by the primary public television licensee.”)

“noncommercial educational television stations,” so that these stations would fall under the auction exemption. The contrary argument – that Congress was somehow unaware that it had already established NCE TV translators to be noncommercial educational broadcast stations in 1992 – would presume, contrary to accepted canons of statutory interpretation, that Congress did not know what it was doing when it enacted the 1997 legislation and the auction exemption.<sup>18</sup>

Moreover, the Commission should not conclude from the phrase, “eligible to be licensed” at Section 397(6)(A), that NCE TV translators are not in fact NCE entities because they are not licensed “as such.”” The words “eligible to be licensed” appear only in the sub-section concerning private nonprofit entities and public agencies. No reference to eligibility for licensing appears in the subsequent sub-section that applies to municipal entities.” If the Media Bureau were to fully and consistently apply its line of reasoning with its focus on the “eligible to be licensed” language, it would have to exempt translators operated only by municipal entities from auction, which would create an illogical and unintended distinction among NCE translators.

Clearly, no such distinction was intended by Congress, as the auction exemption extends to all stations “described in Section 397(6)” of the Communications Act – including all private, governmental, and municipal NCE entities. The Bureau’s interpretation, by way of contrast, would result in only some of the entities described at Section 397(6) being exempt from auctions: a result clearly not intended in the plain

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<sup>18</sup> It is a canon of statutory interpretation that Congress is assumed to be aware of existing law when it passes legislation. See South Dakota v. Yankton Sioux Tribe, 522 U.S. 329, 350 (1998). Miles v. Apex Marine Corp., 498 U.S. 19, 32 (1990).

<sup>19</sup> NPRM, ¶ 21.

<sup>20</sup> See 47 U.S.C. § 397(6)(B).

language of Section 309(j)(2)(C). Indeed, had Congress intended the Commission to focus on those entities “eligible to be licensed” as NCEs, it would have referenced the specific subsection where this language appears – i.e., Section 397(6)(A) – rather than the entirety of Section 397(6). Congress did not do this, however, and the Commission should not impute a narrower motive to Congress when the plain language of its enactment is broader. Nor should the Commission indulge in a statutory reading that leads to the patently absurd result of exempting only some NCE TV translators while subjecting other NCE TV translators to auction.”

### **C. Concerns About License Transfers Can be Addressed Through Holding Periods**

Bureau staff has also voiced the concern that NCE entities holding a NCE TV translator license awarded through a process other than auctions may be tempted to sell that license to a commercial entity, thus encouraging abuse of the Commission’s licensing procedures by commercial entities set on avoiding auctions for new channels. **As** APTS has discussed in its comments, NCE TV translators are designed and deployed by NCE broadcasters to provide universal service: an essential component of the statutory and public service mission of the NCE service.<sup>22</sup> Nevertheless, to address these concerns, APTS has argued that the Commission need only condition the issuance of a license for a NCE TV translator on it not being transferred to a commercial entity for a specified period of time (or indefinitely) through minor changes to its licensing

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<sup>21</sup> See *United States v. X-citement Video Inc.*, et. al., 513 U.S. 64, 69 (1994), *Reno v. American-Arab Anti-Discrimination Comm.*, 525 U.S. 471, 480 (1999), *Public Citizen v. United States Department of Justice*, et. al., 491 U.S. 452 (1989) (citing *Church of the Holy Trinity v. United States*, 143 U.S. 457, 459 (1892)), *United States v. Turkette*, 452 U.S. 576, 580 (1981).

<sup>22</sup> See 47 U.S.C. §§ 396(a)(7) and (9).

processing procedures.” This solution would be simple and administratively efficient and would not require any major changes to Commission policy.<sup>24</sup>

## **II. Alternative Procedures for Awarding Licenses for NCE TV Translators Are Efficient and Pose a Minimum of Administrative Burden**

The Bureau has raised questions concerning how to award licenses for NCE TV translators in lieu of auctions. APTS has worked closely with the Bureau and with other noncommercial educational interests to craft a simple and efficient means of awarding NCE TV translator licenses with a minimum of administrative burden.

***Maintaining Existing Service.*** To maintain existing public television service to 99% of the American public, APTS has proposed that in specified circumstances NCE TV translator applications be received and awarded on a first-come, first-served basis without the use of application “windows.” This policy would simply be an extension of the Commission’s current policy to afford TV translators first-come, first-served processing where these stations are subject to displacement because of the DTV transition or the reallocation of channels 52-69. Circumstances warranting this streamlined procedure would include the following situations where the transition to DTV would otherwise result in a loss of existing television service.

- Situations where the DTV service contour of the main station does not adequately replicate the main station’s former analog contour, thus requiring fill-in service.

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<sup>23</sup> It should be noted that such a mechanism is not required, because the Commission already has in place a de facto holding period requirement: instructions to Form 347 specifically condition the granting of a fee exemption to a NCE TV translator applicant only if the applicant certifies that the station “will be operated or operate on a noncommercial educational basis.” FCC Form **347**, “Application for Low Power TV, TV Translator, or TV Booster License,” Instructions, p. 2 (April 2000).

<sup>24</sup> Requiring a holding period as a condition to the issuance of a NCE TV translator license would simply be a change in administrative processing. It would not, therefore, require the promulgation of any formal regulation and would in no way interfere with the rules and regulations in place as of 1978.

- Situations where a fill-in NCE TV translator is necessary due to increased interference during the DTV transition.
- Situations where it would be advantageous to provide dual analog/digital NCE translator services, in the event that the FCC decides to allow that method to convert TV translator stations to digital.

***Establishing New Service.*** Where a public television station applies for new service, APTS recognizes that fairness dictates that different policies should be implemented. While the vast majority of the American public enjoys some access to public television service, population growth in metropolitan and rural areas is unpredictable and public television needs the flexibility to obtain new NCE TV translator licenses to serve unserved or underserved areas in the future.

To accommodate this circumstance, APTS has proposed that where mutual exclusivities between NCE and commercial applicants occur, the Commission use a need-based approach similar to the one set forth in amended Section 73.202(a)(1) of the Commission's Rules.” The need for an NCE TV translator station would be greater than the need for any other competing LPTV or TV translator station if it were demonstrated that the NCE TV translator applicant would provide a first or second television NCE service to 10% of the population within the proposed NCE translator station's protected contour,

No doubt, the number of such mutual exclusivities will be limited. In fact, based on the last LPTV/TV Translator filing window for Auction 81, only around 35 mutually exclusive groups included NCE translators of APTS member stations out of a total of

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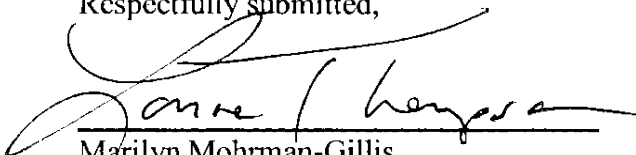
<sup>25</sup> Where there are mutual exclusive applications by multiple NCE entities, APTS supports resolving these through the point system already established by the Commission for full-power NCE/NCE mutual exclusivities.

approximately 592 mutually exclusive groups (i.e., fewer than 6% of the mutually exclusive groups). All but **a** handful of those APTS member mutual exclusivities **have** been resolved by technical or **other** settlements.

## Conclusion

APTS urges the Commission not to subject NCE television translators to auction, NCE television translators rebroadcast the signals of main NCE stations to citizens in geographic areas of our country that would not otherwise receive public television signals and that would not otherwise have access to the important educational and cultural services provided by public television. As such, it is clear that Congress intended NCE television translators to be exempt from auctions, as are their related NCE main stations, in order for public television to meet its statutory mission of universal service to the American public.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Marilyn Mohrman-Gillis", is written over a horizontal line.

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December 20, 2002

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## APPENDIX A



ORIGINAL

## APPLICATION FOR A LOW POWER TV, TV TRANSLATOR OR TV BOOSTER STATION LICENSE

### GENERAL INSTRUCTIONS

A This FCC Form is to be used in all cases when applying for a low power television (LPTV), TV translator or TV booster broadcast station license. The form consists of the following sections:

- I. General Information
- II. Legal Qualifications
- III. Engineering Data and Preparer's Certification (for preparer of engineering sections of the application)

B This application form makes references to FCC rules. Applicants should have on hand and be familiar with current broadcast rules in Title 47 of the Code of Federal Regulations (C.F.R.):

- (1) Part 0 "Commission Organization"
- (2) Part 1 "Practice and Procedure"
- (3) Part 73 "Radio Broadcast Services"
- (4) Part 74 "Experimental, Auxiliary, and Special Broadcast and Other Program Distributional Services"

FCC Rules may be purchased from the Government Printing Office. Current prices may be obtained from the GPO Customer Service Desk at (202) 512-1803. For payment by credit card, call (202) 512-1800, M-F, 8 a.m. to 4 p.m. e.s.t.; facsimile orders may be placed by dialing (202) 518-2233, 24 hours a day. Payment by check may be made to the Superintendent of Documents, Attn: New Orders, P.O. Box 371954, Pittsburgh, PA 15250-7954.

C. Electronic Filing of Application Forms. The Commission is currently developing electronic versions of various broadcast station application and reporting forms, such as this application form. As each application form and report goes online, the Commission will by Public Notice announce its availability and the procedures to be followed for accessing and filing the application form or report electronically via the Internet. For a six-month period following the issuance of the Public Notice, the subject application form or report can be filed with the Commission either electronically or in a paper format. Electronic filing will become mandatory, on a form-by-form basis, six months after each application form or report becomes available for filing electronically.

D. Applicants that prepare this application in paper form

should file an original and two copies of this application and all exhibits. Applicants should follow the procedures set forth in Part 0 and Part 74 of the Commission's Rules.

Amendments to previously filed applications should be prepared, signed and filed in the same manner as the original application, and should contain the following information to identify the associated application:

- (1) Applicant's name.
- (2) Service.
- (3) Call letters.
- (4) Channel number.
- (5) Community of license.
- (6) File number of application being amended (if known).
- (7) Date of filing of application being amended (if file number is not known).

E A copy of the completed application and all related documents shall be made available for inspection by the public. The station records should be maintained at an accessible location in one of the communities of license of the LPTV, TV translator or TV booster, except that the station records of a translator or booster owned by the licensee of the primary station rebroadcast may be kept at the same place where the primary station's records are kept. See 47 C.F.R. Sections 74.781, 73.1125.

F Applicants should provide all information requested by this application. No section may be omitted. If any portions of the application are not applicable, the applicant should so state. Defective or incomplete applications will be returned without consideration. Inadvertently accepted applications are also subject to dismissal.

G In accordance with 47 C.F.R. Section 1.65, applicants have a continuing obligation to advise the Commission, through amendments, of any substantial and material changes in the information furnished in this application. This requirement continues until the FCC action on this application is no longer subject to reconsideration by the Commission or review by any court.

H. This application requires applicants to certify compliance with many statutory and regulatory requirements. Detailed instructions provide additional information regarding Commission rules and policies. These materials are designed to track the standards and criteria which the Commission applies to determine compliance

and to increase the reliability of applicant certifications. They are not intended to be a substitute for familiarity with the Communications Act and the Commission's regulations, policies, and precedent. While applicants are required to review all application instructions, they are not required to complete or retain any documentation created or collected to complete the application.

- I. This application is presented primarily in a "Yes/No" certification format. However, it contains appropriate places for submitting explanations and exhibits where necessary or appropriate. Each certification constitutes a material representation. Applicants may only mark the "Yes" certification when they are certain that the response is correct. A "No" response is required if the applicant is requesting a waiver of a pertinent rule and/or policy, or where the applicant is uncertain that the application fully satisfies the pertinent rule and/or policy. Thus, a "No" response to any of the certification items will not cause the immediate dismissal of the application provided that an appropriate exhibit is submitted.
- J. The applicant, and the applicant's authorized engineering representative, if any, must sign the application. Depending on the nature of the applicant, the application should be signed as follows: if a sole proprietorship, personally; if a partnership, by a general partner; if a corporation, by an officer; for an unincorporated association, by a member who is an officer; if a governmental entity, by such duly elected or appointed official as is competent under the laws of the particular jurisdiction. Counsel may sign the application for his or her client, but only in cases of the applicant's disability or absence from the United States. If the application is filed electronically, the signature will consist of the electronic equivalent of the typed name of the individual. See Report and Order in MM Docket No. 98-43, 13 FCC Rcd 23056, 23064 (1998).

## INSTRUCTIONS FOR SECTION I: GENERAL INFORMATION

- A. Item 1: Applicant Name. The legal name of the applicant must be stated exactly in Item 1. If the applicant is a corporation, the applicant should list the exact corporate name; if a partnership, the name under which the partnership does business; if an unincorporated association, the name of an executive officer, his/her office, and the name of the association; and, if an individual applicant, the person's full legal name.

Applicants should use only those state abbreviations approved by the U.S. Postal Service.

FCC Registration Number (FRN). To comply with the Debt Collection Improvement Act of 1996, the applicant

must enter its FRN number, a ten-digit unique entity identifier for anyone doing business with the Commission. The FRN can be obtained through the FCC webpage at <http://www.fcc.gov> or by manually submitting FCC Form 160. FCC Form 160 is available for downloading from <http://www.fcc.gov/formpage.html> or by calling 1-800-418-3676. Questions concerning the FCC Registration Number can be directed to the Commission's Registration System help desk at [http://www.CORF.S\(fcc.aor.\)](http://www.CORF.S(fcc.aor.)) or by calling 1-877-480-3201.

Facility ID Number. Radio and TV Facility ID Numbers can be obtained at the FCC's Internet Website at [www.fcc.gov/mmb](http://www.fcc.gov/mmb). Once at this website, scroll down and select CDBS Public Access. You can also obtain your facility ID number by calling: Radio - 202-418-2700, TV - 202-418-1600. Further, the Facility ID Number is now included on all Radio and TV authorizations and postcards.

- B. Item 2: Contact Representative. If the applicant is represented by a third party (for example, legal counsel), that person's name, firm or company, and telephone/electronic mail address may be specified in Item 2.
- C. Item 3: Fees. The Commission is statutorily required to collect charges for certain regulatory services to the public. Generally, applicants seeking a license to cover a LPTV, TV translator, or TV booster facility authorized by and constructed pursuant to an outstanding construction permit are required to pay and submit a fee with the filing of FCC Form 347. However, governmental entities, which include any possession, state, city, county, town, village, municipal corporation or similar political organization or subpart thereof controlled by publicly elected and/or duly appointed public officials exercising sovereign direction and control over their respective communities or programs, are exempt from the payment of this fee. Also exempted from this fee are licensees and permittees of noncommercial educational FM and full-service television broadcast stations seeking to construct new LPTV, TV translator or TV booster stations, or to make major changes in the authorized facilities of such stations, provided those stations will be operated or operate on a noncommercial educational basis. Applicants that earlier obtained either a fee refund because of a NTIA facilities grant for the station or a fee waiver because of demonstrated compliance with the eligibility and service requirements of 47 C.F.R. Section 73.621, are similarly exempt from payment of this fee. See 41 C.F.R. Section 1.1114.

When filing a fee-exempt application, an applicant must

complete Item 3 and provide an explanation as appropriate. Applications NOT subject to a fee may be hand-delivered or mailed to the FCC at its Washington, D.C. offices. See 47 C.F.R. Section 0.401(a). Fee-exempt applications should not be sent to the Mellon Bank Lockbox; so doing will result in a delay in processing the application.

The Commission's fee collection program utilizes a U.S. Treasury lockbox bank for maximum efficiency of collection and processing. Prior to the institution of electronic filing procedures, all FCC Form 347 applications requiring the remittance of a fee, or for which a waiver or deferral from the fee requirement is requested, must be submitted to the appropriate post office box address. See 47 C.F.R. Section 0.401(b). A listing of the required fee and the address to which FCC Form 347 should be mailed or otherwise delivered are also set forth in the "Mass Media Services Fee Filing Guide." This document can be obtained either by writing to the Commission's Form Distribution Center, 9300 E. Hampton Drive, Capital Heights, Maryland 20743, or by calling 1-800-418-FORM and leaving a request on the answering machine provided for this purpose. See also 47 C.F.R. Section 1.1104. The Fee Filing Guide also contains a list of the Fee Type Codes needed to complete this application.

Payment of any required fee must be made by check, bank draft, money order, or credit card. If payment is made by check, bank draft, or money order, the remittance must be denominated in U.S. dollars, drawn upon a U.S. institution, and made payable to the Federal Communications Commission. No postdated, altered, or third-party checks will be accepted. **DO NOT SEND CASH.** Additionally, checks dated six months or older will not be accepted.

Procedures for payment of application fees when applications are filed electronically will be announced by subsequent Public Notice. See General Instruction C above. Payment of application fees may also be made by Electronic Payment prior to the institution of electronic filing, provided that prior approval has been obtained from the Commission. Applicants interested in this option must first contact the Credit and Debt Management Center at (202) 418-1995 to make the necessary arrangements.

Applicants hand-delivering FCC Forms 347 may receive dated receipt copies by presenting copies of the applications to the acceptance clerk at the time of delivery. For mailed-in applications, a "return copy" of the application should be furnished and clearly marked as a "return copy." The applicant should attach this copy to a stamped, self-addressed envelope. Only one piece of

paper per application will be stamped for receipt purposes.

For further information regarding the applicability of a fee, the amount of the fee, or the payment of the fee, applicants should consult the "Mass Media Services Fee Filing Guide."

## INSTRUCTIONS FOR SECTION II: LEGAL INFORMATION

- A. **Item 1: Certification.** Each applicant is responsible for the information that the application instructions convey. As a key element in the Commission's streamlined licensing process, a certification that these materials have been reviewed and that each question response is based on the applicant's review is required.
- B. **Item 2: Permit Conditions.** This question requires the applicant to certify that all terms, conditions, and obligations set forth in the underlying construction permit have been fully met. Each applicant should review its underlying construction permit carefully prior to making its certification to confirm that the facility was constructed exactly in accordance with the permit. If any such term, condition, or obligation has not been fulfilled, the applicant should respond "No" to Section II, Item 2 and provide an appropriate explanatory exhibit. See 47 C.F.R. Section 74.1251
- C. **Item 3: Changed Circumstances.** This question requires the applicant to certify that all information provided in the underlying construction permit application remains correct. If any circumstance has arisen which would cause any statement or representation contained in the construction permit application to be incorrect, the applicant should respond "No" to Section II, Item 3 and provide an appropriate explanatory exhibit.
- D. **Item 4: Programming.** A LPTV or TV translator station operator proposing to rebroadcast the signal of a primary station which it does not own must obtain written permission of that station prior to retransmission of that signal. See 47 C.F.R. Section 74.784. Section II, Item 4 requires the applicant to certify that such written authority has been received. TV translator applicants proposing to rebroadcast the signal of stations that they own, as well as applicants for TV booster stations, should mark the box labelled "Yes."

**NOTE: LPTV and TV translator stations are required to broadcast station identification announcements. This can be done in one of two ways. First, the LPTV or TV translator station not originating local programming as defined by 47 C.F.R. Section 74.701(h) can arrange with**

the primary station whose signal is to be rebroadcast to identify the LPTV or TV translator by call sign and location. **If** this method of station identification is utilized, there **must** be two such identifications between 7 a.m. and 9 a.m. and another two identifications between 3 p.m. and 5 p.m. each broadcast day at approximately one hour intervals during each time period. Alternatively, the LPTV or TV translator may transmit its call sign in International Morse Code at least once each hour. Sec 41 C.F.R. Sections 74.783 and 73.1201.

Also, where the station's identification is to be made by a primary station, the LPTV or TV translator station must provide to the primary station and arrange for the maintenance of current information as to the LPTV or TV translator station's call letters and location, and the name, address and telephone number of the person to be contacted in an emergency to suspend LPTV or TV translator operation.

- F Items 5 and 6: Character Issues/Adverse Findings.** Item 5 requires the applicant to certify that neither it nor any party to the application has had any interest in or connection with an application that was or is the subject of unresolved character issues. An applicant must disclose in response to Item 6 whether the applicant or any party to the application has been the subject of a final adverse finding with respect to certain relevant non-broadcast matters. The Commission's character policies and litigation reporting requirements for broadcast applicants focus on misconduct which violates the Communications Act or a Commission rule or policy and on certain specified non-FCC misconduct. In responding to Items 5 and 6, applicants should review the Commission's character qualifications policies, which are fully set forth in Character Qualifications, 102 FCC 2d 1179 (1985), reconsideration denied, 1 FCC Rcd 421 (1986), as modified, 5 FCC Rcd 3252 (1990) and 7 FCC Rcd 6564 (1992).

**NOTE:** As used in this question, the term "party to the application" includes any individual or entity whose ownership or positional interest in the applicant is attributable. An attributable interest is an ownership interest in or relation to an applicant or licensee which will confer on its holder that degree of influence or control over the applicant or licensee sufficient to implicate the Commission's multiple ownership rules. See Report and Order in MM Docket No. R3-46, 97 FCC 2d 997 (1984), reconsideration granted in part, 58 RR 2d 604 (1985), further modified on reconsideration. 61 RR 2d 739 (1986).

Where the response to Item 5 is "No," the applicant must submit an exhibit that includes an identification of the

party having had the interest, the call letters and location of the station or file number of the application or docket, and a description of the nature of the interest or connection, including relevant dates. The applicant should also fully explain why the unresolved character issue is not an impediment to a grant of this application.

In responding to Item 6, the applicant should consider any relevant adverse finding that occurred within the past ten years. Where that adverse finding was fully disclosed to the Commission in an application filed on behalf of this station or in another broadcast station application and the Commission, by specific ruling or by subsequent grant of the application, found the adverse finding not to be disqualifying, it need not be reported again and the applicant may respond "Yes" to this item. However, an adverse finding that has not been reported to the Commission and considered in connection with a prior application would require a "No" response.

Where the response to Item 6 is "No," the applicant must provide in an exhibit a full disclosure of the persons and matters involved, including an identification of the court or administrative body and the proceeding (by dates and file numbers), and the disposition of the litigation. Where the requisite information has been earlier disclosed in connection with another pending application, or as required by 47 U.S.C. Section 1.65(c), the applicant need only provide an identification of that previous submission by reference to the file number in the case of an application, the call letters of the station regarding which the application or Section 1.65 information was filed, and the date of filing. The applicant should also fully explain why the adverse finding is not an impediment to a grant of this application.

- G Item 7: Anti-Drug Abuse Act Certification.** This question requires the applicant to certify that neither it nor any party to the application is subject to denial of federal benefits pursuant to the Anti-Drug Abuse Act of 1988, 21 U.S.C. Section 862.

Section 5301 of the Anti-Drug Abuse Act of 1988 provides federal and state court judges the discretion to deny federal benefits to individuals convicted of offenses consisting of the distribution or possession of controlled substances. Federal benefits within the scope of the statute include FCC authorizations. A "Yes" response to Item 7 constitutes a certification that neither the applicant nor any party to this application has been convicted of such an offense or, if it has, it is not ineligible to receive the authorization sought by this application because of Section 5301

**NOTE:** With respect to this question, the term "party to

the application" includes if the applicant is an individual, that individual; if the applicant is a corporation or incorporated association, all officers, directors, or persons holding 5 percent or more of the outstanding stock or shares (voting and/or non-voting) of the applicant; all members if a membership association; and if the applicant is a partnership, all general partners and all limited partners, including both insulated and non-insulated limited partners, holding a 5 percent or more interest in the partnership.

#### INSTRUCTIONS FOR SECTION 111: ENGINEERING DATA AND PREPARER'S CERTIFICATION

- A Tech Box:** The applicant must specify the information requested in Items 1 through 5 of the Tech Box. The data should accurately reflect the specifications set forth in the underlying construction permit.

The latitude and longitude coordinates for all points in the United States are based upon the 1927 North American Datum (NAD 27). The National Geodetic Survey is in the process of replacing NAD 27 with the more accurate 1983 North American Datum (NAD 83) and updating current topographic maps with NAD 83 datum. In addition, coordinates determined by use of the satellite-based Global Positioning System already reflect the NAD 83 datum. To prevent intermixing of data using two different datums, however, the Commission announced that until further notice, applicants are to furnish coordinates based on the NAD 27 datum on all submissions and the Commission will continue to specify NAD 27 coordinates in its data bases and authorizations.

In addition, applicants who have already filed applications with coordinates that reflect NAD 83 datum must provide NAD 27 coordinates to the appropriate Commission licensing bureau. See Public Notice, entitled "FCC Interim Procedures for the Specification of Geographic Coordinates," 3 FCC Rcd 1478 (1988).

- B Item 6: Constructed Facility.** The applicant must certify that the facility was constructed as authorized in the underlying construction permit. If there are any differences between the facilities constructed compared with those authorized in the construction permit, the applicant may need to seek approval for the change on FCC Form 346. See Section 74.751
- C Item 7: Special Operating Conditions.** The special operating conditions are located on the final pages of the construction permit. Attach exhibits, if required, to document compliance with the special operating condition. **NOTE: SPECIAL OPERATING CONDITIONS MAY PROHIBIT AUTOMATIC PROGRAM TEST AUTHORITY**

**Automatic Program Test Authority:** The permittee of an LPTV, TV Translator or Booster station may begin program tests upon filing FCC Form 347 with the FCC. See 47 C.F.R. Section 74.14. This provision does not apply if the underlying construction permit contains a special operating condition prohibiting automatic program test authority.

- D Preparer's Certification.** When someone other than the applicant has prepared the engineering section of FCC Form 347, Section III requires that person to certify, to the best of his/her knowledge and belief, the veracity of the technical data supplied. The Section III preparer's certification in FCC Form 347 need not be completed if the engineering portion of the application has been prepared by the applicant. In that event, the applicant's certification in Section II of FCC Form 347 will encompass both the legal and engineering sections of the application.

#### FCC NOTICE TO INDIVIDUALS REQUIRED BY THE PRIVACY ACT AND THE PAPERWORK REDUCTION ACT

The FCC is authorized under the Communications Act of 1934, as amended, to collect the personal information we request in this form. We will use the information provided in the application to determine whether approving this application is in the public interest. If we believe there may be a violation or potential violation of a FCC statute, regulation, rule or order, your application may be referred to the Federal, state or local agency responsible for investigating, prosecuting, enforcing or implementing the statute, rule, regulation or order. In certain cases, the information in your application may be disclosed to the Department of Justice or a court or adjudicative body when (a) the FCC or (b) any employee of the FCC; or (c) the United States Government is a party to a proceeding before the body or has an interest in the proceeding. In addition, all information provided in this form will be available for public inspection.

If you owe a past due debt to the federal government, any information you provide may also be disclosed to the Department of Treasury Financial Management Service, other federal agencies and/or your employer to offset your salary, IRS tax refund or other payments to collect that debt. The FCC may also provide this information to these agencies through the matching of computer records when authorized.

If you do not provide the information requested on this form, the application may be returned without action having been taken upon it or its processing may be delayed while a request is made to provide the missing information. Your response is required to obtain the requested authorization.

We have estimated that each response to this collection of information will take 1 hour and 30 minutes. Our estimate includes the time to read the instructions, look through existing records, gather and maintain the required data, and actually complete and review the form or response. If you have any comments on this estimate, or on how we can improve the collection and reduce the burden it causes you, please write the Federal Communications Commission, AMD-PERF, Paperwork Reduction Project (3060-0017), Washington, DC 20554. We will also accept your comments via the Internet if you send them to [lhaley@fjcc.gov](mailto:lhaley@fjcc.gov). Please DO NOT SEND COMPLETED APPLICATIONS TO THIS ADDRESS. Remember - you are not required to respond to a collection of information sponsored by the Federal government, and the government may not conduct or sponsor this collection, unless it displays a currently valid OMB control number of if we fail to provide you with this notice. This collection has been assigned an OMB control number of 3060-0017.

THE FOREGOING NOTICE IS REQUIRED BY THE PRIVACY ACT OF 1974, P.L. 93-579, DECEMBER 31, 1974, 5 U.S.C. 552a(e)(3), AND THE PAPERWORK REDUCTION ACT OF 1995, P.L. 104-13, OCTOBER 1, 1995. 44 U.S.C. Section 3507.

**FCC 347**

FOR  
FCC  
USE  
ONLY

**LOW POWER TV, TV TRANSLATOR OR TV  
BOOSTER STATION LICENSE**

FOR COMMISSION USE ONLY  
FILE NO.

1. Legal Name of the Licensee/Permittee		
City	State or Country (if foreign address)	ZIP Code
Telephone Number (include area code)		E-Mail Address (if available)
FCC Registration Number	Call Sign	Facility Identifier

2. Contact Representative (if other than licensee/permittee)	Firm or Company Name	
Mailing Address		
City	State or Country (if foreign address)	ZIP Code
Telephone Number (include area code)		E-Mail Address (if available)

3. If this application has been submitted without a fee, indicate reason for fee exemption (see 47 C.F.R. Section 1.1114):

☐ Governmental Entity      ☐ Noncommercial Educational Licensee/Permittee      ☐ Other \_\_\_\_

4. Facility Information:

a. ☐ Low Power Television      ☐ TV Translator      ☐ TV Booster

b. Community of License: 

City	State
------	-------

5. Purpose of Application:

☐ Cover construction permit (list original construction permit file number -- starts with the prefix BPTTL, BPTT, BPTVL, BPTTV, RMP TTL, BMPTT, BMPTVL, BMPTTV, BPVR, BPUB, BMPVB or BMPUB): \_\_\_\_\_

☐ Amend a pending application

If an amendment, **submit as an** Exhibit a listing by Section and Question Number the portions of the pending application that are being revised.

Exhibit No. 1
------------------

**NOTE:** In addition to the information called for in this section, an explanatory exhibit providing full particulars **must be submitted** for each question for which a "No" response is provided.

## Section II - Legal

1. Certification. Licensee/Permittee certifies that it has answered **each** question in this application based on its review of the application instructions and worksheets. Licensee/Permittee further certifies that where it has made an affirmative certification below, this certification constitutes its representation that the application satisfies each of the pertinent standards and criteria set forth in the application instructions and worksheets. ☐ Yes ☐ No
2. Licensee/Permittee certifies that all terms, conditions, and obligations set forth in the underlying construction permit have been fully met. ☐ Yes ☐ No 

See Explanation in Exhibit No.
3. Licensee/Permittee certifies that, apart from changes already reported, no cause or circumstance has arisen since the grant of the underlying construction permit which would result in any statement or representation contained in the construction permit application to be now incorrect. ☐ Yes ☐ No 

See Explanation in Exhibit No.
4. Programming. The applicant certifies that it is either the licensee of the primary station whose programming is to be retransmitted or has obtained written authority from the licensee of that station. ☐ Yes ☐ No 

See Explanation in Exhibit No.
5. Character Issues. Licensee/Permittee certifies that neither licensee/permittee nor any party to the application has or has had any interest in, or connection with:
  - a. any broadcast application in any proceeding where character issues were left unresolved or were resolved adversely against the applicant or party to the application; or
  - b. any pending broadcast application in which character issues have been raised.☐ Yes ☐ No 

See Explanation in Exhibit No.
6. Adverse Findings. Licensee/Permittee certifies that, with respect to the licensee/permittee and any party to the application, no adverse finding has been made, nor has an adverse final action been taken by any court or administrative body in a civil or criminal proceeding brought under the provisions of any law related to the following: any felony; mass media-related antitrust or unfair competition; fraudulent statements to another governmental unit; or discrimination. ☐ Yes ☐ No 

See Explanation in Exhibit No.
7. Anti-Drug Abuse Act **Certification.** Licensee/Permittee certifies that neither licensee/permittee nor any party to the application is subject to denial of federal benefits pursuant to Section 5301 of the Anti-Drug Abuse Act of 1988, 21 U.S.C. Section 862. ☐ Yes ☐ No

Typed or Printed Name of Person Signing	Typed or Printed Title of Person Signing
Signature	Date



### SECTION III - Engineering

#### TECHNICAL SPECIFICATIONS

Ensure that the specifications below are accurate. Contradicting data found elsewhere in this application will be disregarded. All items must be completed. The response "on file" is not acceptable.

#### TECH BOX

1.	Channel:	_____
2.	Frequency Offset	
	<input type="checkbox"/> No offset	<input type="checkbox"/> Zero offset
	<input type="checkbox"/> Plus offset	<input type="checkbox"/> Minus offset
3.	Antenna Location Coordinates: (NAD 27)	
	_____° _____' _____" <input type="checkbox"/> N <input type="checkbox"/> S Latitude	
	_____° _____' _____" <input type="checkbox"/> E <input type="checkbox"/> W Longitude	
4.	Maximum Effective Radiated Power (EKP) Toward Radio Horizon:	_____ kW
5.	Maximum EKP in any horizontal and vertical angle:	_____ kW

**NOTE:** In addition to the information **called** for in this section, an explanatory exhibit providing full particulars must be submitted **for each question** for which a "Nn" response is provided.

#### CERTIFICATION

All applicants must complete this section.

- |    |                                                                                                                                                                                     |                                                          |                                               |
|----|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|----------------------------------------------------------|-----------------------------------------------|
| 6. | Constructed Facility. The facility was constructed as authorized in the underlying construction permit.                                                                             | <input type="checkbox"/> Yes <input type="checkbox"/> No | <div>See Explanation<br/>in Exhibit No.</div> |
| 7. | Special <b>Operating</b> Conditions. The facility was constructed in compliance with all special operating conditions, terms, and obligations described in the construction permit. | <input type="checkbox"/> Yes <input type="checkbox"/> No | <div>See Explanation<br/>in Exhibit No.</div> |

Exhibit No.  
9

**PREPAREDER'S CERTIFICATION ON PAGE 4 MUST BE COMPLETED AND SIGNED.**

### SECTION III PREPARER'S CERTIFICATION

I certify that I have prepared Section III (Engineering Data) on behalf of the applicant, and that after such preparation, I have examined and found it to be accurate and true to the best of my knowledge and belief.

Name		Relationship to Applicant (e.g., Consulting Engineer)	
Signature		Date	
Mailing Address			
City	State or Country (if foreign address)		ZIP Code
Telephone Number (include area code)	E-Mail Address (if available)		